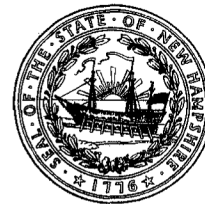




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Belknap County Department of Corrections
Attn: Walter R. Newcomb, Superintendent
1194 North Main Street
Laconia, NH 03246-2685

Re: UST ID #0-113930

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND LICENSE ACTION
No. AF 05 - 044**

May 20, 2005

I. INTRODUCTION

This Notice of Proposed Administrative Fine and License Action is issued by the Department of Environmental Services, Waste Management Division to the Belknap County Department of Corrections. Pursuant to RSA 146-C:10-a and NH Admin. Rule Env-C 600, the Division is proposing that fines totaling **\$1,200** be imposed against the Belknap County Department of Corrections for the violations alleged below. Also, pursuant to RSA 541-A:30, RSA 146-C:4, and Env-Wm 1401.09, the Division is proposing that DES suspend the permit to operate an underground storage facility held by the Belknap County Department of Corrections, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302-0095.
2. The Belknap County Department of Corrections ("Belknap DOC") is an administrative agency of the County of Belknap of the State of New Hampshire having a mailing address of 1194 North Main Street, Laconia, NH 03246-2685.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 146-C authorizes the Department of Environmental Services ("DES") to regulate the installation, maintenance, operation, licensing and closure of underground storage facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted N.H. Admin. Rules Env-Wm 1401 to set forth the requirements for underground storage facilities by "establishing criteria for registration and permitting, and standards for design, installation, operation, maintenance, and monitoring of such facilities."
2. RSA 146-C:10-a authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense upon any person who violates any provision of RSA 146-C or any rule adopted under the provisions of this chapter. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.

3. RSA 146-C:4 prohibits the operation of an underground storage facility in New Hampshire without a permit. The permit to operate is issued by, and may be revoked by DES in accordance with RSA 541-A:30 for just cause, including, but not limited to, the operation or ownership of an underground storage facility in violation of DES's rules. Pursuant to RSA 146-C:9, the Commissioner has adopted Env-Wm 1401 regarding the ownership, registration and operation of underground storage tanks and facilities including criteria for issuing, renewing and revoking a permit to operate an underground storage tank or facility in New Hampshire.

4. The Belknap County Department of Corrections is the registered facility owner of one underground storage tank ("UST") at the Belknap County Department of Corrections facility ("the Facility"), further identified as UST #0-113930, located on real property at 1194 North Main Street, Laconia, NH ("the Property"). DES issued permit to operate No. 0113930 dated May 1, 2002 ("the Permit") to the Belknap County Department of Corrections, to allow the operation of the UST at the Facility.

5. The UST system is subject to the requirements of RSA 146-C and Env-Wm 1401.

6. On February 26, 2004, a Division inspector conducted a compliance inspection at the Facility and noted compliance deficiencies which were identified in a report (the "Report") issued to the Facility representative at the time of the inspection.

7. The Report notified the Facility that compliance was to be achieved within 30 days of the date of the inspection and verification of compliance submitted to the Division within 45 days of the date of the inspection. Acknowledgement of receipt of the Report was signed by Richard Glidden on behalf of the Facility.

8. The Report also included a UST Facility Summary of Deficiencies identified at the time of the inspection. Among those deficiencies identified, the Division was not notified that the following was corrected within 45 days after the inspection was performed:

- a. A tightness test of the 10,000-gallon #2 fuel oil UST system had not been performed since November 9, 1989; and
- b. The overfill protection device for the UST was not properly installed.

9. Env-Wm 1401.13 (a) requires all underground storage systems without secondary containment and leak monitoring to be tightness tested if the system was not tightness tested since November 9, 1989.

10. Env-Wm 1401.25(d) defines the manner in which the overfill protection devices shall be installed.

IV. VIOLATIONS ALLEGED, PROPOSED LICENSE ACTION, AND ADMINISTRATIVE FINE(S)

1. Belknap DOC has violated Env-Wm 1401.13(a) by failing to tightness test the 10,000-gallon #2 fuel oil UST system since November 9, 1989. For this violation, Env-C 607.04(a) specifies a fine of \$1,000 per tank per requirement not met.

2. Belknap DOC has violated Env-Wm 1401.25(e) by failing to maintain the overfill protection device on the 10,000-gallon #2 fuel oil UST in good working order. For this violation, Env-C 607.05(j) specifies a fine of \$200 per requirement not met.
3. Based on the violations identified above, the Division proposes that DES revoke the permit to operate.

The total fine being sought is \$1,200.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Belknap DOC is required to respond to this notice. Please respond no later than July 7, 2005 date using the enclosed colored form.

Belknap DOC has the right to a hearing to contest these allegations before the proposed license action is taken or any administrative fine is imposed. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which Belknap DOC and any witnesses Belknap DOC may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination. If Belknap DOC wishes to have a hearing, one will be scheduled promptly.

RSA 541-A:31, III(e) provides that Belknap DOC has the right to have an attorney present to represent Belknap DOC at Belknap DOC's expense. Belknap DOC is not required to be represented by an attorney. If Belknap DOC chooses to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

1. If Belknap DOC would like to have a hearing, please have an authorized representative sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If Belknap DOC wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance form, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If Belknap DOC chooses to waive the hearing, relinquish the permit to operate and/or pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Belknap DOC committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Belknap DOC committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

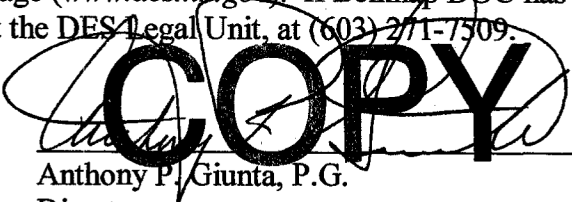
* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Belknap DOC proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** Belknap DOC did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Belknap DOC did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Belknap DOC was making a good faith effort to comply with the requirement that was violated.
3. Belknap DOC has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Belknap DOC's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Belknap DOC committed the violations alleged above, that the proposed license action be taken and proposed fine(s) be imposed. **The hearing is Belknap DOC's opportunity to present testimony and evidence that Belknap DOC did not commit the violations, that the proposed license action should not be taken and/or that the fines should not be imposed, or that the fines sought should be reduced.** If Belknap DOC has any evidence, such as photographs, business records or other documents, that Belknap DOC believes show that Belknap DOC did not commit the violations or that otherwise support Belknap DOC's position, then Belknap DOC should bring the evidence to the hearing. Belknap DOC may also bring witnesses (other people) to the hearing to testify on Belknap DOC's behalf.

Information regarding this proposed administrative fine and license action may be made available to the public via the DES Web page (www.des.nh.gov). If Belknap DOC has any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.


Anthony P. Giunta, P.G.
Director
DES Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
James Martin, DES Public Information Officer
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Lynn A. Woodard, P.E., WMD UST Supervisor
Thomas R. Beaulieu, WMD UST Chief
Tammy Calligandes, WMD

***** RETURN THIS PAGE ONLY *****

**BELKNAP COUNTY DEPARTMENT OF CORRECTIONS IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN July 7, 2005

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Belknap County Department of Corrections:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Belknap County Department of Corrections:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine(s) and that I hereby waive those rights. The fine payment in the amount of \$1,200 paid to "Treasurer, State of New Hampshire" is enclosed.*

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed license action and that I hereby waive those rights and relinquish UST permit to operate No. 0113930

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.